

## MEMORANDUM OF LAW

DATE: July 8, 1985

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Council Vacancy Procedure

By memorandum of July 1, 1985 and confirmed by telephone on July 3, 1985, you pointed out that only one (1) person has applied for appointment to fill the District 7 Council vacancy. In light of this fact, you ask for a construction of San Diego Municipal Code section 27.3106 whether the impossibility of selecting at least four (4) applicants obviates the need for the second hearing described in San Diego Municipal Code section 27.3107.

As San Diego Municipal Code section 27.3101 details, the purpose of Division 31 is to establish an orderly procedure to follow in making appointments and for an orderly procedure for

applicants "in presenting their applications for consideration by the Council ...." Thus, the procedure must be construed both from the view of the selectors as well as the potential selectee.

To allow for a full review of the applicants qualifications, as well as for thorough probing of views on relevant municipal issues, the San Diego Municipal Code requires two (2) hearings.

#### SEC. 27.3105 TWO PUBLIC HEARINGS

Before any appointment to fill a vacancy in an elective office shall be made, the Council shall hold two (2) public hearings for the purpose of considering the applications for appointment .... (Emphasis added.)

Thus, the first hearing is a limited session with candidates allowed three (3) minutes to make a presentation with only limited clarification. San Diego Municipal Code section 27.3106

a. While section 27.3106 b. does call for the selection of "at least four (4) but no more than six (6) applicants" as you point

out, this obviously is meant as a narrowing number that is excused in this circumstance because of impossibility.

The second hearing described in Section 27.3107 is far less restrictive. Hence not time limitation or questioning limitation is outlined as contrasted with the narrowing first hearing of

Section 27.3106. Rather, a robust range of questions are encouraged ranging from "philosophy of government" to "opinions on relevant municipal issues." To forfeit this second hearing simply because of lack of a designated number would deny both selectors and selectee the broad examination of relevant background information.

We conclude both from the language of Section 27.3105 and from the public interest in having a thorough examination of qualifications that two (2) hearings are required even though fewer than four (4) applicants exist.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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